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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

RICHARD BEGG,

*Petitioner,*

vs.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, ILLINOIS, and the CITY OF PARK RIDGE, ILLINOIS,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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## QUESTION PRESENTED FOR REVIEW

Does a traffic ticket quota system violate the Fourteenth Amendment due process clause in that it subjects innocent motorists to the issuance of traffic citations without probable cause?

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

## OPINIONS BELOW

On November 23, 1981, the Honorable James C. Murray entered an order that the decision of the City of Park Ridge, Illinois, Fire and Police Commission suspending the petitioner for three days for refusing to meet a traffic ticket quota was to be reversed, since it was against public policy (the order of the Honorable James C. Murray is reprinted herein as Appendix A).

On November 24, 1982, the Illinois Appellate Court reversed the decision of the Honorable James C. Murray by holding that requiring the petitioner to write .80 traffic

tickets per day was an administrative rule or regulation that was presumptively valid and therefore not arbitrary and capricious, since the petitioner had not met the burden of proving it arbitrary and capricious (decision is reprinted herein as Appendix B).

However, the concurring opinion of the Illinois Appellate Court stated that:

> Although I agree in general that the "arbitrary" and "unreasonable" test is appropriate for cases involving the validity of administrative regulations, when a regulation requires a police officer to charge members of the public with a certain number of quasi-criminal infractions per day, far more serious questions are raised. It is no longer simply a question of whether the statute is arbitrary and unreasonable. For example, if it could be shown statistically that an increased issuance of traffic tickets reduces traffic accidents, then the quota system would arguably survive the arbitrary and unreasonable test applied by the majority to the quota system in this case. Nonetheless, if a police officer, to keep his job, to get promoted and/or to gain favor with his superiors, issues traffic tickets to innocent people, serious public policy concerns arise.

At the administrative hearing of the petitioner, the testimony of the Park Ridge police officers, supports the expressed fears of the concurring opinion concerning the traffic ticket quota system impinging upon the due process rights of innocent motorists, which testimony is quoted as follows:

> Direct Examination of William Vallas.
>
> Q. What does the Traffic Index mean here in terms of the amount of tickets or traffic citations that should be issued per day?

A. Say it's a quota system.
Q. Why would you say it's a quota system?
A. Our supervisor seems to be very concerned about how many tickets we write. If you're short in a month, they'll tell you you have to write more tickets to be even with the month and so forth.
Q. Do you feel that this is a compulsory requirement to write .80 tickets per day?
A. Yes, I do.

Direct Examination of Paul Polk.

Q. Now, in terms of what you call a Traffic Index, what does that mean to you as is required here?
A. Quota.
Q. Why do you say it's a quota?
A. It's a mandatory amount that I'm required to write every month, specified amount.
MR. JAKALA: For the record, I'm going to identify these officers. Will you please identify yourselves by name?
MR. WILLIAMS: Officer David J. Williams.
MR. DEL FOSSE: Officer Gerald Del Fosse.
MR. JAKALA: If these men were to testify, they would testify as to the issue that the—that this is a quota system. They would testify to the issue that the non-traffic citation greatest volume activity is the vacant home inspections.

Direct Examination of Richard Begg.

Q. Now, Officer Begg, in connection with part one, how many tickets per day is each officer required to write in this department.
A. Point eight.
Q. Now, this particular system is identified as a traffic index. Do you have another term for it in your opinion?
A. Quota.

Furthermore, the cross-examination of Lieutenant George Teune (one of the chief witnesses for the prosecution) certainly reinforces the testimony of the other Park Ridge, Illinois police officers as stated herein when Lieutenant Teune testified that:

> Cross-Examination of Lieutenant George Teune.
>
> Q. We're going to try to conclude now, Lieutenant. We're going to do it in a certain way if I may. One, .80 per day traffic citation, is that called a Traffic Index?
>
> A. I've heard it referred to as that, yes.
>
> Q. Would you believe—is that the proper way to describe it?
>
> A. I would think that if I was to describe it, that's the way I would describe it, yes, sir.
>
> Q. All right. Could you describe a quota system to me in terms of issuance of tickets per day?
>
> A. A quota system, in essence, has a negative connotation.
>
> Q. Besides a negative connotation?
>
> A. Quota system would be a required performance level, the activity that a person was hired to do for a specific period of time. A measure of quantitative and qualitative activity of a—in this case, a particular police officer as it pertained to traffic law enforcement.
>
> Q. Required to do. Okay. Point 80 per day, isn't that a requirement that a police officer must do?
>
> A. In my opinion, yes.
>
> Q. Is that any different than a quota?
>
> A. According—by your definition, no.
>
> Q. I don't know if we differ in definitions, but—
>
> A. I don't think, no.
>
> Q. You don't think we differ in definitions? Thank you.

Because the petitioner had been suspended for three days as punishment for failure to meet the traffic quota system, the concurring opinion's observation that traffic

quotas raise serious public policy concerns when they are related to a police officer "keeping his job" is well taken.

On January 20, 1984, the Illinois Supreme Court affirmed the decision of the Illinois Appellate Court, that requiring the writing of .80 traffic tickets per day was not arbitrary nor capricious, but did not specifically address the issue raised by the concurring opinion; namely, that a traffic quota system, as an administrative rule or regulation, that is presumptively valid, nevertheless violates the public interest when the issuance of traffic citations to innocent motorists is not based upon probable cause (the decision by the Illinois Supreme Court is reprinted herein as Appendix C).

## JURISDICTION

1. The federal question was raised in the administrative hearing before the City of Park Ridge, Illinois Fire and Police Commission, was raised in the Complaint for Administrative Review filed in the Circuit Court of Cook County, Illinois, and heard by the Honorable James C. Murray, was raised in the Appellate Court, and considered by the concurring opinion, and was raised in the Illinois Supreme Court, relating to the issue that a traffic quota system requiring the writing of .80 traffic tickets per day violates the Fourteenth Amendment by subjecting innocent motorists to the issuance of unwarranted tickets thereby violating the public interest.

2. That the petition for Writ of Certiorari was filed within ninety days after the entry of the judgment by the Illinois Supreme Court on January 20, 1984.

## CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

That the Petitioner was employed as a City of Park Ridge, Illinois police officer having the status of a patrolman prior to August 15, 1980.

That, on August 15, 1980, the Director of Public Safety of the City of Park Ridge, Illinois, G. Joe Moffitt, suspended the Petitioner for three days without pay for allegedly violating certain performance standards applicable to patrol officers of the City of Park Ridge, Illinois, Police Department.

That the suspension order of August 15, 1980, pertained to the Petitioner's alleged failure to issue traffic citations equivalent to .80 per day.

The Petitioner appealed the three-day suspension to the City of Park Ridge, Illinois, Fire and Police Commission pursuant to *Illinois Revised Statutes*, Chap. 24, Sec. 2.1-17 (1980), which provides for such appeals.

At the Fire and Police Commission hearing of the City of Park Ridge, Illinois, the Petitioner had filed a Motion to Dismiss the three-day suspension in that the requiring of the Petitioner to issue traffic citations of .80 per day constituted a traffic quota system contrary to public policy and was in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

The Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, denied the Motion to Dismiss. Thereupon, the Petitioner included the same legal theory as stated in his Motion to Dismiss as part of his answer.

Upon conclusion of the evidence before the City of Park Ridge, Illinois Fire and Police Commission, the Commission found that the Petitioner had failed to meet the required traffic quota system for a period between April 1, 1980 and June 30, 1980, to which the three-day suspension related, since the Petitioner issued traffic citations equivalent to .59 per day for that period.

Because of its finding, the City of Park Ridge, Illinois Fire and Police Commission upheld the three-day suspension of the Petitioner.

Thereafter, the Petitioner filed a Complaint for Administrative Review contending that the requirement of issuing .80 traffic tickets per day constituted a traffic quota system and therefore was against public policy.

On November 23, 1981, the Honorable James C. Murray entered an order that the decision of the City of Park Ridge, Illinois Fire and Police Commission suspending the Petitioner for three days was to be reversed, since the suspension related to a traffic quota system which was against public policy.

Subsequently the Illinois Appellate Court reversed the Honorable James C. Murray with the concurring opinion holding that traffic quotas violated the Fourteenth Amendment by subjecting innocent motorists to traffic arrests without probable cause.

Thereafter, the Illinois Supreme Court granted a petition for leave and affirmed the Illinois Appellate Court without considering the issue as raised by the concurring opinion of the Illinois Appellate Court; that is, issuance of traffic tickets without probable cause violates due process of the Fourteenth Amendment of the United States Constitution.

## REASONS FOR GRANTING THE WRIT

### A TRAFFIC TICKET QUOTA SYSTEM VIOLATES THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE IN THAT IT SUBJECTS INNOCENT MOTORISTS TO THE ISSUANCE OF TRAFFIC CITATIONS WITHOUT PROBABLE CAUSE.

In its opinion, the Illinois Supreme Court holds that, since none of the petitioner's witnesses at the administrative hearing had testified that the .80 standard of required traffic tickets was not unreasonable or an arbitrary standard, the standard of the City of Park Ridge, Illinois requiring .80 traffic tickets per day was therefore a reasonable and an acceptable standard.

However, in its opinion, the Illinois Supreme Court totally disregarded the issue raised by the concurring opinion of the Illinois Appellate Court which asserted that, although an administrative rule or regulation may survive the test of reasonableness, nevertheless such a standard cannot be upheld if it violates a public interest or public policy concern.

In this instance, the concurring opinion viewed the traffic quota as an objectionable standard, since it subjects innocent motorists to the issuance of traffic citations without probable cause.

That the Illinois Supreme Court totally ignored that issue as raised by the concurring opinion of the Illinois Appellate Court is evidenced by its only reference to that concurring opinion when the Court states (Appendix C, page 11a):

> One justice, in what is labeled a special concurrence, believed that "the case should be remanded to the circuit court for a determination of whether

> there (was a) sufficient basis for suspension of (appellant) without regard to (appellant's) failure to satisfy the requirements of the traffic ticket quota system." 110 Ill. App. 3d 941, 947 (Johnson, P.J., specially concurring).

After referring to the concurring opinion in the manner that it had, the Illinois Supreme Court did not further comment on that aspect of the issue as raised by the petitioner and addressed by the concurring opinion.

In the testimony as previously quoted in this Writ of certain police officers of the City of Park Ridge, Illinois, including that of the petitioner, it is quite apparent that the requirement of writing .80 traffic citations per day is a mandatory requirement that is required by the City of Park Ridge, Illinois.

Such a mandatory traffic citation requirement is against public policy and has been recognized as such by the Pennsylvania legislature when, in 1981, it enacted a law, No. 1981-114, which prohibited "political subdivisions or agencies" from "imposing certain quotas on the issuance of citations for certain offenses."

The Pennsylvania Statute, No. 1981-114, states:

1. No political subdivision or agency of the Commonwealth shall have the power or authority to order, mandate, require or in any other manner, directly or indirectly, suggest to any *police officer, State Police Officers,* game commission officer, fish commission officer or any other officer employed by such political subdivision or agency of the Commonwealth that said *police officer, State Police Officer,* game commission officer, fish commission officer or any other officer shall issue a certain number of *traffic citations, tickets or any other type of citation on any daily, weekly, monthly, quarterly or yearly basis.* (emphasis added)

2. Any tickets issued in violation of this act shall be unenforceable, null and void.

The significance of the Pennsylvania Statute is that the "quotas" to which it refers include traffic citations and that it does not matter whether such "quotas" include less than one ticket per day, since quotas are considered inherently wrong.

In the analysis of the Pennsylvania Statute, not only are traffic quotas inherently wrong from the standpoint that innocent motorists are subjected to traffic citations without probable cause, but that a police officer is deprived of the discretion to issue a traffic citation, which discretion is recognized as being vital under Illinois law. *People v. Patterson*, 88 Ill.App.3d 144 (1980); *Collins v. Board of Fire and Police Commissioners*, 84 Ill.App.3d 516 (1980).

Discretionary authority is necessary to insure that the law is enforced in a fundamentally fair and objective manner.

In this instance, by removing the discretion from the petitioner via the mandatory traffic ticket requirement of issuing .80 tickets per day, such removal of discretionary authority prevents police officers, such as the petitioner, from enforcing the law in a fundamentally fair and objective manner.

Certainly, punishing the petitioner via a three-day suspension constitutes a removal of discretion since it discourages police officers from exercising discretionary authority which is subject to punishment.

Furthermore, according to the testimony of the Park Ridge, Illinois police officers, the mandatory traffic requirement of .80 citations per day as being correlated to performance evaluations is in effect to "build" an officer's activity record.

Such mandatory traffic requirement is contrary to the Amici brief that had been filed on behalf of the City of Park Ridge, Illinois, in the Illinois Supreme Court, when in their brief they had stated:

> ". . . the enforcement of traffic laws for the sole purpose of building an activity record is as repugnant as enforcement for revenue purposes."

Because the traffic quota system of the City of Park Ridge, Illinois is a mandatory system of writing .80 tickets per day, because that mandatory traffic system in effect removes discretionary authority from the police officers relating to the issuance of traffic citations, because that traffic quota system penalizes the police officer for failure to meet that quota as evidenced by the three-day suspension of the petitioner, because that traffic quota system is nothing more than an activity record builder, such a traffic quota system violates public policy, since it subjects innocent motorists to the issuance of traffic tickets without probable cause.

As the petitioner had orally argued before the Supreme Court of Illinois, the intended end of less accidents does not justify the traffic quota system as a means, since the means are against public policy pursuant to the observations noted from the testimony of another City of Park Ridge, Illinois police officer not previously quoted in this Writ of Certiorari, which testimony was elicited at the administrative hearing of the petitioner:

Direct Examination of William F. Motisi.

Q. Are you familiar with the so-called traffic point system of this Police Department?
A. Yes, sir, I am.
Q. How many traffic citations must you issue per day?
A. Eighty percent of one.
Q. Is this required by your department?

A. Yes, sir, it is.

Q. And if you do not fulfill that requirement, what happens, if anything?

A. You may get a letter or a reprimand from your supervisor that you're behind in writing tickets.

Q. Do you feel that this ticket point system is a quota system?

A. Yes, sir, I do.

Q. And how do you define the quota system?

A. *Without any—okay. Without any excuses at all, you must write a minimum number of that many tickets, point eight per day, 80 percent of one ticket per day, no excuses, nothing can be given. You're supposed to do that.* (emphasis added)

Therefore, the traffic ticket quota system, herein, as an illegal means, cannot be justified by a legal end.

Ironically, in this instance, the means as exercised, herein, specifically the traffic quota system, did not establish the end of achieving less accidents, since it was not proven by the respondent that the traffic quota system in effect achieved that end as is substantiated by the following quotation from the opinion of the Illinois Supreme Court (Appendix C, pages 16a-17a):

> "During oral argument before this court, the appellant argued that the means (the traffic index) that the city instituted to achieve the ends (less accidents) were not only against public policy, but were also unsuccessful. However, as the appellate court noted, there was no conclusive evidence presented to show that the traffic-index standard had not reduced the number of accidents. Captain Baudek did testify that the number of accidents had increased but so, too had the traffic count. Lieutenant Teune testified that since the index was instituted there had been a reduction in the number of accidents. This testimony is inconclusive in establishing the effectiveness of the regulation."

## CONCLUSION

For reasons enumerated herein, the writ should be granted.

Respectfully submitted,

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# APPENDIX A

IN THE
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

RICHARD BEGG,

*Plaintiff,*

*v.*

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, ILLINOIS,

*Defendant.*

No. 81 L 2184

## ORDER

After reviewing the pleadings and briefs and transcript of proceedings before the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, and the Court having jurisdiction over the subject matter and parties:

It is hereby ordered that decision of the City of Park Ridge, Illinois Fire and Police Commission suspending the Plaintiff for 3 days is reversed in that Plaintiff was suspended on the basis of a traffic quota system which is against public policy.

There is no just reason for delay of the enforcement of this final order.

JUDGE JAMES C. MURRAY
NOV. 23, 1981
CIRCUIT COURT

# APPENDIX B

Opinion Of The Appellate Court Of Illinois
First District, Fourth Division
No. 81-3114 — Filed November 24, 1982

CITY OF PARK RIDGE, ILLINOIS,

*Defendant-Appellant,*

*v.*

RICHARD R. BEGG,

*Plaintiff-Appellee.*

Appeal From The Circuit Court Of Cook County
Honorable James C. Murray, Presiding

JUSTICE ROMITI delivered the opinion of the court:

Plaintiff Richard Begg, a police officer with the city of Park Ridge, was suspended without pay for three days by order of the city's director of public safety because he failed to meet certain job performance standards relating to the number of traffic tickets he issued and the number of non-traffic activities he performed. That order was affirmed following an evidentiary hearing before the Park Ridge Fire and Police Commission. However, plaintiff then filed an administrative review action and the circuit court of Cook County reversed the Commission, finding that plaintiff was suspended on the basis of a traffic quota system which was against public policy. On appeal to this court defendants contend that the circuit court's finding was not supported by the record.

We reverse.

At the hearing before the Fire and Police Commission the following pertinent evidence was adduced. In December 1977, Captain John Baudek, commander of the field operations bureau of the city's police department, issued an order setting traffic enforcement standards for patrol officers. The order stated, *inter alia*, that:

> "[w]ith the number of miles that a patrol officer drives during a watch and the high volume of traffic in the Park Ridge area * * * it is reasonable for an officer to observe one traffic violation during a watch. Keeping in mind the midnight watch and other consideration [*sic*], a patrol officer will be expected to issue .80 [traffic] citations per day of patrol over a standard three-month watch cycle."

The order noted that the standard was below that presently performed by many officers. Baudek also stated in the order:

> "While a deviation below the standard does not automatically mean the officer is below an acceptable level of performance, I would expect his supervisor to be able to explain such a deviation if the officer is given an acceptable rating in that area of performance on his evaluation."

In his testimony at the hearing Baudek explained that his purpose in issuing the order was to set standards which were quantifiable and measurable rather than having totally subjective personal opinion standards of evaluation. Another reason for setting the standards was to reduce the number of accidents. On this latter point he testified that the number of accidents in Park Ridge had increased since the standard was set, but also stated that the traffic count had also increased in that period. According to Baudek the traffic citation standards were required to be met unless there were extenuating circumstances.

Baudek also testified that there existed a second category of activities used to judge the officers. These activities included non-traffic violations and such tasks as checking doors at the homes of vacationing residents of Park Ridge. There was no set standard established for

this category but supervisors were told what the averages were for each watch and department. According to Baudek these two categories constituted only one small part of the overall evaluation of the officers. Evaluation forms were completed by the officer's watch commander.

Lieutenant George Teune, plaintiff's watch commander, testified that those evaluation forms included matters such as the officer's initiative, promptness, and the amount of sick time he used in addition to the two categories of objective performance statistics. He estimated that those two categories counted for forty to fifty percent of the evaluation. It was his opinion that establishing the objective standards had reduced the number of accidents in Park Ridge. He also noted that another purpose of those standards was to establish a norm from which superior performance could be identified. He conceded that those standards amounted to a quota system.

In an order issued April 24, 1980, plaintiff was warned that his performance on the police department was not at an acceptable level. He had used an unacceptable amount of sick time and had been suspended for one day earlier that year for the misuse of sick time. His traffic index score for 1979 was .40. His score in that category for the first quarter of 1980 was .15, the lowest in the department and well below the departmental average of .829. His score for non-traffic activities for 1979 was .76, while the departmental average for that period was 1.75. His first-quarter 1980 score for that index was .99, while the departmental average was 1.50. Plaintiff was informed in the order that for the second quarter of 1980 he had to achieve traffic index and non-traffic index scores of .80 and 1.50 repsectively. He was also instructed to reduce his sick time usage, barring serious illness or injury, not to do anything requiring disciplinary action to be taken against him, and to obtain a departmental physical exam. (It is conceded that he met the latter three requirements.)

It was established without contradiction at the hearing that plaintiff failed to meet the index requirements for

the second quarter of 1980. His traffic index average was .59 while the departmental average was .92 and his watch's average was also .92. His non-traffic index average was .97 while his watch's average was .186 and that of the department was 1.66. Accordingly, a letter of reprimand was issued and he was suspended without pay for three days.

Plaintiff testified that he was in his 18th year with the Park Ridge police force. It was his opinion that the index requirements constituted a quota and that 90 percent of the evaluation of officers was based on fulfillment of those index requirements. He stated that the indexes did not reflect all that he did, such as referring young drivers to their parents rather than issuing citations to them the first time. He had issued only one traffic ticket in 21 days in April because he saw none others that were "of a hazardous nature that would require a ticket." He gave as an example of such a non-hazardous violation a rolling stop with no traffic present. He conceded that in May he made a special attempt to bring up his traffic index; that month his traffic index was 1.80. According to plaintiff the highest volume activity performed by officers in relation to their non-traffic activity index was checking on vacant homes. He testified that he had seen officers marking down the time, date, location and condition of homes before they went on patrol; however, he could not recall the names of the officers he saw doing this. Plaintiff called as witnesses a number of Park Ridge police officers who testified that they considered the index requirements to be quotas and who believed that fulfillment of those quotas constituted the most important part of their evaluations. Several officers also testified that they had observed other officers noting in police records that they had checked vacant houses before they even went on patrol; however none of the officers testified that those homes were in fact not subsequently checked.

Based on this evidence the Fire and Police Commission found that plaintiff had not met the required performance standards for traffic citations and non-traffic activities and

further found that he had not established any mitigating circumstances sufficient to excuse his performance below those standards. Accordingly, his three-day suspension without pay was affirmed. The sole basis for the circuit court's reversal of this decision was its finding that plaintiff was suspended on the basis of a traffic quota system which was against public policy.

The sole issue before us is the validity of the circuit court's determination that the city of Park Ridge could not require plaintiff to meet the standards at issue. In determining this issue we note that administrative regulations, like statutes, are presumptively valid and one attacking such regulations has the burden of establishing their invalidity. (*Midwest Petroleum Marketers Association v. City of Chicago* (1980), 82 Ill. App. 3d 494, 402 N.E.2d 709.) Moreover, such regulations will be set aside by a reviewing court only if they are found to be clearly arbitrary, capricious or unreasonable. *Illinois Coal Operators Association v. Pollution Control Board* (1974), 59 Ill. 2d 305, 319 N.E.2d 782; *Shell Oil Co. v. Pollution Control Board* (1976), 37 Ill. App. 3d 264, 346 N.E.2d 212.

Plaintiff's central challenge to the regulations at issue appears to be that they establish an absolute quota to be met by the police officers and that such quota systems are *per se* against public policy. For that proposition plaintiff cites *People v. Patterson* (1980), 88 Ill. App. 3d 144, 410 N.E.2d 223, and *Bodenschatz v. State Personnel Board* (1971), 15 Cal. App. 3d 775, 93 Cal. Rptr. 471. But neither of those cases even involved quota systems. In *Patterson*, despite uncontradicted testimony from a police officer that the defendant was initially stopped for speeding, the trial court had suppressed evidence discovered as the result of that stop on the ground that the officer lacked probable cause for the stop. In reversing that holding the appellate court noted that the fact the motorist was not charged by the officer with speeding but was only issued a warning did not justify the circuit court's disbelief of the officer. The court noted that an officer may always issue a warning or reprimand without citing a

motorist. We find nothing in that statement of the discretion invested in a police officer to support the proposition that the regulation at issue here is against public policy. Nothing in the record indicates that plaintiff was not free to exercise his discretion in a similar manner in any individual case. In *Bodenschatz*, a police officer was dismissed because his enforcement activity was well below the average for his fellow officers. The officer challenged his dismissal in part because he contended that his level of activity was low only because the police department had a policy of requiring its officers to engage in more enforcement activity than circumstances warranted. The appellate court agreed that such a policy would be improper as contrary to the public interest but noted that the officer had failed to meet his burden of proving that such a policy was in existence. In this cause there was no evidence to suggest that plaintiff was being asked to meet standards which were unreasonably high. Nor was there any testimony that other police officers or the plaintiff would have had to issue unjustified citations to meet the standards.

Plaintiff contends that the traffic index requirement was improper because it had not resulted in reducing accidents in Park Ridge, one of the stated goals set for it. But no such evidence was presented at the hearing. Captain Baudek conceded that the number of accidents had increased, but he also testified that traffic had also increased. Lieutenant Teune specifically testified that he believed establishing objective standards had reduced the number of accidents in Park Ridge. Moreover, there were other stated goals intended to be achieved by these objective standards. They provided a means of evaluating officers in terms of minimal performance as well as identifying superior performance.

Finally plaintiff contends that too much emphasis was placed on the objective standards rather than overall police performance. However, Captain Baudek testified that the two objective categories were only a small part of the evaluation of officers. Lieutenant Teune estimated

that the objective standards comprised less than half of the total evaluation. The Commission was free to accept these lesser estimates as opposed to the greater percentages testified to by plaintiff's witnesses who of course did not conduct the evaluations. Furthermore plaintiff has failed to demonstrate that even great reliance on such objective standards would be unreasonable.

Clearly plaintiff failed to meet his burden of establishing that the challenged regulations were arbitrary or unreasonable.

For the foregoing reasons, the judgment of the circuit court of Cook County is reversed.

LINN, J., concurs.

PRESIDING JUSTICE JOHNSON, specially concurring:

I concur with the result reached by the majority that the judgment of the circuit court must be reversed. The effect of this decision is to restore plaintiff to his original position. I believe, however, that the case should be remanded to the circuit court for a determination of whether there is sufficient basis for suspension of plaintiff without regard to plaintiff's failure to satisfy the requirements of the traffic ticket quota system.

The cases cited by defendants in support of their position, with the exception of *Bodenschatz v. State Personnel Board* (1971), 93 Cal. Rptr. 471, 15 Cal. App. 3d 775, deal with the administrative regulations as such and not with the problems of traffic ticket quota systems, which raise questions of a different nature. In *Bodenschatz,* the administrative regulation in question had a quantity requirement as does the regulation in this case. However, in *Bodenschatz,* the overriding function of the administrative regulation was traffic law enforcement and not a straight numerical requirement such as is present in this case.

In the instant case, the circuit court held that traffic ticket quota systems are "against public policy" and set aside the decision of the Park Ridge Fire and Police Com-

mission suspending plaintiff. The majority here did, indeed, subject the Park Ridge traffic ticket quota system to judicial scrutiny, but, in so doing, applied the usual test for a judicial examination of the validity of administrative regulations. That test is (1) presume the regulation to be valid and (2) invalidate it only if it is arbitrary and unreasonable. By applying this test mechanically to this situation, the majority ignores serious public policy objections to a traffic ticket quota system. Although I agree in general that the "arbitrary and unreasonable" test is appropriate for cases involving the validity of administrative regulations, when a regulation requires a police officer to charge members of the public with a certain number of quasi-criminal infractions per day, far more serious questions are raised. It is no longer simply a question of whether the statute is arbitrary and unreasonable. For example, if it could be shown statistically that an increased issuance of traffic tickets reduces traffic accidents, then the quota system would arguably survive the arbitrary and unreasonable test applied by the majority to the quota system in this case. Nonetheless, if a police officer, to keep his job, to get promoted and/or to gain favor with his superiors, issues traffic tickets to innocent people, serious public policy concerns arise. Public policy, of course, is a vague notion encompassing many different ideas. Due process under both the Federal and State constitutions requires officers of the State to act in a fundamentally fair and objective manner. A traffic ticket quota system interjects an extraneous and irrelevant, yet personally important, factor into the decision-making process. The real question should be whether the police officer had reasonable grounds to believe that a traffic ordinance had been violated—not how many tickets the officer must issue that month in order to retain his job.

In my opinion, this court correctly reversed the decision of the circuit court, but we should remand the case to the trial court to determine whether the decision of the Park Ridge Fire and Police Commission can be upheld without regard to the quota system.

# APPENDIX C

Docket No. 57721—Agenda 22—September 1983.

RICHARD BEGG, Appellant, v. BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, *et al.*, Appellee.

JUSTICE CLARK delivered the opinion of the court:

In this case the appellant, Richard R. Begg, a police officer with the city of Park Ridge, was suspended without pay for three days for allegedly failing to meet certain job performance requirements or standards relating to his traffic and nontraffic activities as a police officer. The city's director of public safety ordered the suspension, and that order was affirmed by the Fire and Police Commission after an evidentiary hearing. The appellant then filed an administrative review action in the circuit court of Cook County. The circuit court reversed the commission because it found that appellant was suspended based on a traffic quota system which it held was against public policy. The appellate court, one justice specially concurring, reversed. (110 Ill. App. 3d 941.) The majority of the appellate court held that there was no evidence to suggest that the appellant was being asked to meet standards which were unreasonably high, nor was there any testimony that the appellant or other officers were to issue unjustified citations to meet the standards required of them. (110 Ill. App. 3d 941, 946.) The appellate court further held that the standards provided a means of evaluating officers in terms of minimal performance as well as identifying superior performance and that appellant had failed to demonstrate that even great reliance on such objective standards would be unreasonable. The court held: "Clearly plaintiff [appellant] has failed to meet his burden of establishing that the challenged regulations were arbitrary or unreasonable." 110 Ill. App. 3d 941, 946.

One justice, in what is labeled a special concurrence, believed that "the case should be remanded to the circuit court for a determination of whether there [was a] sufficient basis for suspension of [appellant] without regard to [appellant's] failure to satisfy the requirements of the traffic ticket quota system." 110 Ill. App. 3d 941, 947 (Johnson, P.J., specially concurring).

The appellant filed a petition for leave to appeal in this court, and we granted his petition under our Rule 315 (87 Ill. 2d R. 315). We also granted leave to Americans for Effective Law Enforcement, Inc., the Illinois Association of Chiefs of Police, Inc., and the International Association of Chiefs of Police, Inc. to file a joint brief *amicus curiae* in support of the city of Park Ridge and to the Grand Lodge of the Fraternal Order of Police, who filed a brief *amicus curiae* on behalf of appellant.

At the evidentiary hearing before the Fire and Police Commission the following evidence was adduced: Captain John Baudek, commander of the field operations bureau of the city's police department, issued an order on December 19, 1977, setting certain traffic enforcement standards for patrol officers. The order provided in pertinent part:

> "In Park Ridge in 1976, there were over twenty-one hundred motor vehicle accidents and it appears that the number in 1977 will reach or exceed that number.
>
> * * *
>
> . . . a commitment to reducing motor vehicle accidents and the injuries, deaths, and sorrow that accompany them should be a major objective of both the department's administration and officers.
>
> * * *
>
> I believe that the standard detailed below is reasonable considering the numerous other tasks that a patrol officer in Park Ridge must perform. The standard gives both the patrol officer and his supervisors one quantifiable reference point for performance and productivity. It should be pointed out that the stand-

ard given is below the standard presently performed by many officers.

While a deviation below the standard does not automatically mean the officer is below an acceptable level of performance, I would expect his supervisor to be able to explain such a deviation if the officer is given an acceptable rating in that area of performance on his evaluation. The standard for traffic enforcement will be as follows:

With the number of miles that a patrol officer drives during a watch and the high volume of traffic in the Park Ridge area, I believe that it is reasonable for an officer to observe one traffic violation during a watch. Keeping in mind the midnight watch and other consideration[s], a patrol officer will be expected to issue .80 "X" citations per day of patrol over a standard three-month watch cycle."

Baudek testified at the evidentiary hearing before the Fire and Police Commission. He stated that his purpose in issuing the above order was to decrease the number of traffic accidents in Park Ridge. He testified that, since he had issued the order, the number of accidents in Park Ridge had not decreased. But he also stated that the traffic count had increased, a fact which might account for the rise in the number of accidents. The standard was also used as a quantifiable and measurable basis upon which to evaluate the police department's officers. Baudek testified that it provided a measurable standard on which to judge an officer's performance rather than depending solely on a subjective personal opinion of a supervisor.

Baudek explained that an officer was evaluated in three ways. The traffic activities that were discussed in the order were one way, nontraffic activities were the second way, and the subjective evaluation by an officer's watch commander was the third way. In the nontraffic activities category, Baudek testified, an officer was expected to perform such tasks as checking doors of the homes of vacationing residents and schools. Even though there was no

set standard for nontraffic activities, supervisors were given averages for each department and watch and were expected to use that average as a basis for comparison. Baudek testified that the traffic and nontraffic activities of a police officer were only a small part of the officer's overall evaluation. An officer's watch commander was responsible for completing his or her evaluation form.

Lieutenant George Teune, the appellant's watch commander, was responsible for evaluating the appellant. At the hearing, Teune testified that the evaluation forms included the two objective performance statistics for traffic and nontraffic activities in addition to other areas of evaluation such as the officer's amount of initiative, promptness, and the amount of sick time he used. Teune testified that the nontraffic and traffic categories, objective categories, represented 40% to 50% of the overall evaluation of the officer. Teune, contrary to what Captain Baudek had testified, stated, that, since the standard (which he believed amounted to a quota system) was instituted, the number of accidents in Park Ridge had decreased. He also testified that the standards established a norm from which an officer's superior performance could be judged.

On April 24, 1980, by order, the appellant was warned his performance as a police officer had fallen below an acceptable level. The appellant's sick time record was described as "if not the poorest on the department, very close to that level." His productivity levels were considered to be "in fact the lowest of any officer on the department by almost any standard used." Appellant's traffic index score was listed at .40 for 1979, and for the first quarter of 1980 it was .15, the lowest in the department and well below the departmental average of .829. In nontraffic activities, the appellant's nontraffic index score was listed at .76 for 1979, and .99 for the first quarter of 1980. The departmental averages for that same period were 1.75 and 1.50 respectively. Appellant was told that he had specific objectives to meet for the second quarter of 1980 or he would be subject to discipline. He

was to improve his traffic and nontraffic index scores, reduce his use of sick time (barring any serious illness), refrain from doing anything which would cause disciplinary action to be taken against him, and submit to a physical examination to be performed by a departmental physician. Appellant did fulfill the last three of these objectives. However, the evidence clearly established that he failed to meet the traffic and nontraffic standards which were set for the second quarter of 1980. A letter of reprimand was consequently issued and the appellant was suspended for three days without pay.

Appellant testified during the hearing to the following facts and opinions. He had been on the Park Ridge police force for 18 years. The index standards, in his opinion, constituted a quota system. He believed that 90% of an officer's evaluation was based on the traffic and nontraffic index standards. He did not believe that the indices were a true reflection of an officer's performance because they did not reflect certain activities an officer performed. Appellant gave the example of a situation where an officer would refer young drivers to their parents rather than give them a ticket if it was a first offense.

In April of 1980, appellant only issued one ticket in 21 days because he believed that the other infractions he had seen were not "of a hazardous nature that would require a ticket." A rolling stop with no traffic present was an example of this type of infraction. In May, the appellant's traffic index was 1.80. Appellant testified that, during that month he had made a special effort to improve his score.

Appellant stated that in the area of nontraffic activities, checking homes was the highest volume activity. Although he could not name the officers who did it, appellant stated that some officers marked down the time, date, location and condition of homes before they even checked them.

Several officers testified at the hearing expressing their belief that the index standards were in fact quotas and that their evaluations consisted mainly of their scores regarding the index standards. These officers also testified

to seeing other officers fill out the forms for recording house checks before they actually went out on patrol. None of the officers could testify that these homes were not subsequently checked.

As we mentioned previously, the Fire and Police Commission, based on the above evidence, found that, since appellant had failed to meet the required traffic and non-traffic indices and had not presented any mitigating circumstances which would excuse his unacceptable performance, his suspension for three days without pay was proper. The circuit court of Cook County reversed the commission's decision based solely on the fact that it found the traffic index standard to be a traffic quota system which it held was against public policy. The appellate court reversed the decision of the circuit court because it held that appellant had failed to sustain his burden of proof to establish that the traffic index standard was arbitrary or unreasonable.

Appellant does not challenge the right of the city of Park Ridge to enforce its traffic laws. However, he does argue that by requiring police officers to meet certain standards of enforcement, the city is violating public policy and issuing an unreasonable, arbitrary and capricious rule. In *Midwest Petroleum Marketers Association v. City of Chicago* (1980), 82 Ill. App. 3d 494, the court held:

> "To constitute a legitimate exercise of the police power, municipal legislation must bear a reasonable relationship to the public interest intended to be protected, and the means adopted must be a reasonable method of accomplishing the desired objective." (82 Ill. App. 3d 494, 500.)

It also held that, "[o]nce the legislative body determines that a problem exists and acts to protect and promote the general welfare of its citizens, the legislation is presumed to be a valid exercise of the city's police power." 82 Ill. App. 3d 494, 500, citing *Union Cemetery Association v. Cooper* (1953), 414 Ill. 23.

Administrative regulations, for purposes of determining their validity, are presumed to be valid. (*Du-Mont Ventilating Co. v. Department of Revenue* (1978), 73 Ill. 2d 243.) An administrative regulation will not be set aside unless it has been clearly arbitrary, unreasonable or capricious (*Illinois Coal Operators Association v. Pollution Control Board* (1974), 59 Ill. 2d 305, 310), and the person questioning the validity of the administrative regulation bears the burden of establishing its invalidity (*Illinois State Chamber of Commerce v. Pollution Control Board* (1977), 49 Ill. App. 3d 954, 960).

In the instant case, as was stated in Captain Baudek's order, the city of Park Ridge was faced with an increasing number of motor vehicle accidents. In response to this situation, it issued an order which was meant to reduce motor vehicle accidents, injuries and deaths, by requiring police officers to perform at a certain level in their traffic enforcement activities. This regulation is presumed to be valid and we will not set it aside unless it is shown to be arbitrary, unreasonable or capricious. The appellant has the burden of establishing the regulation's invalidity, since he is the one who is challenging its validity.

Appellant did not present any evidence to demonstrate that the traffic index standard was unreasonable. Neither the appellant nor any other officer testified that he was forced to issue more tickets than were justified in order to meet the traffic-index standard. None of them testified that the .80 standard was an unreasonable or arbitrary standard.

During oral argument before this court, the appellant argued that the means (the traffic index) that the city instituted to achieve the ends (less accidents) were not only against public policy, but were also unsuccessful. However, as the appellate court noted, there was no conclusive evidence presented to show that the traffic-index standard had not reduced the number of accidents. Captain Baudek did testify that the number of accidents had increased but so, too, had the traffic count. Lieutenant Teune testified

that since the index was instituted there had been a reduction in the number of accidents. This testimony is inconclusive in establishing the effectiveness of the regulation.

In its *amicus curiae* brief, filed on behalf of the city, Americans for Effective Law Enforcement, Inc., asserted that standards such as the one set in the instant case not only serve to reduce traffic accidents, but also provide a necessary means by which a police department can maintain structure and control over its police officers. It asserted that administrative rulemaking is necessary to assure uniformity in the enforcement of laws in addition to fulfilling the department's need for accountability over its officers.

Appellant contends that the traffic-index standard plays too big a role in the overall evaluation of an officer. Captain Baudek and Lieutenant Teune both testified that the traffic and nontraffic indices were less than 50% of an officer's overall evaluation. The two objective categories were used to make the evaluation less arbitrary. An officer was no longer evaluated solely on the basis of a watch commander's personal opinion. The appellant failed to show that reliance upon these standards in evaluating officers was unreasonable or arbitrary.

Any regulation can be abused by those persons responsible for its enforcement; however, that does not mean that the regulation itself is invalid or against public policy. As we stated earlier in this opinion, the appellant had the burden of establishing that the regulation was arbitrary and unreasonable. He failed to meet that burden.

Accordingly, we affirm the judgment of the appellate court, which reversed the judgment of the circuit court.

*Judgment affirmed.*

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FILED
JUN 28 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1675

IN THE

# Supreme Court of the United States

OCTOBER TERM 1983

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RICHARD BEGG,

*Petitioner,*

*v.*

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE and the CITY OF PARK RIDGE, ILLINOIS, a municipal corporation,

*Respondents.*

---

## RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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RICHARD BEGG,

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*Respondents.*

---

## RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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## STATEMENT OF THE CASE

In 1977, the Park Ridge Police Department issued an Order, No. 77-014, establishing "Traffic Enforcement Standards" for all patrol officers. The Order cites the high number of motor vehicle accidents in the City of Park Ridge, the resulting financial loss and human suffering and finds that a strong police traffic enforcement program is necessary to control accidents and injuries. In order to implement such an enforce-

ment program, the Order establishes standards for patrol officers. Based on an expectation that an officer will observe at least one traffic violation during each tour of duty, the officer is expected to issue an average of 0.8 traffic tickets per day over a 90-day period. An officer's activity as measured against this standard is one factor considered in his overall performance evaluation.

Richard Begg was a veteran police officer of the City of Park Ridge, having 18 years on the job at the time this action arose. He has since retired from the Department. For some time prior to the present charges being placed against Begg, he had been warned by his superiors that his job performance on all measures was below acceptable levels. In April 1980, he was given a written order from the Director of Public Safety to bring his activity up to specified levels during the succeeding quarter or disciplinary measures would be taken. He failed to comply and was suspended for three days by the Director of Public Safety. Pursuant to state statute, he demanded and received a hearing before the Board of Fire and Police Commissioners of the City of Park Ridge.

At the hearing, the Department supervisors testified to the basis for, and operation of, the traffic enforcement standards and performance appraisal system. Evidence was presented that Begg had failed to meet the required standards. Begg's witnesses, all his fellow officers, testified that in their opinion the Department's traffic enforcement standards constituted a "quota system." No evidence was offered by Begg contradicting his failure to meet the enforcement standards. Rather, Begg testified that he preferred to handle traffic violations by way of verbal warnings and that he engaged in other activities which were not reflected in the Department's performance appraisal process. The Board of Fire and Police Commissioners found that the manifest weight of the evidence supported the disciplinary action. The Board's Order appears in the Appendix hereto.

Pursuant to state statute, Begg filed a Complaint to review the Board's action in the Circuit Court of Cook County. A copy of the Complaint and Brief in support thereof appear in the Appendix hereto. The Circuit Court, without explanation, held that Begg "was suspended on the base of a traffic quota system which is against public policy," and reversed the decision of the Board of Fire and Police Commissioners.

The City appealed to the Appellate Court of Illinois, which reversed the Circuit Court and affirmed the decision of the Board of Fire and Police Commissioners. Contrary to the assertion in the Petitioner's Statement Of The Case in the Petition For Writ Of Certiorari, neither the majority nor the concurring opinion of the Appellate Court held that traffic quotas violate the 14th Amendment. Begg sought and was granted Leave To Appeal to the Illinois Supreme Court.

The Supreme Court of Illinois unanimously affirmed the judgment of the Court of Appeals and the Board of Fire and Police Commissioners. Begg now seeks to have this ruling reviewed by this Court. The City believes that review by this Court should not be granted.

## ARGUMENT

### I.

### THE PETITIONER HAS FAILED TO SHOW THAT A FEDERAL QUESTION WAS PRESENTED TO OR DECIDED BY THE ILLINOIS SUPREME COURT.

The Question Presented For Review in this case is the product of Petitioner's imagination. It is not the issue which was presented to or decided by the Illinois Supreme Court. Moreover, Petitioner has failed to show that the state court decision is based any federal question.

The decision of the Illinois Supreme Court dealt only with the sufficiency of Petitioner's evidence at the administrative hearing. The Court held that Petitioner failed to rebut the City's evidence that the administrative regulation is reasonable. This Court has repeatedly held that it does not have jurisdiction to review the determination of a federal question unless it was presented to and relied upon the Court below. *Crowell* v. *Randell,* 35 U.S. (10 Pet.) 368 (1836). This Court has "consistently refused to decide federal constitutional issues raised here for the first time on review of state court decisions." *Cardinale* v. *Louisiana,* 394 U.S. 437 (1969).

The party seeking review by this Court has the burden of proving that the federal question was presented to the state court. Where, as in this case, the highest state court has failed to pass upon the federal question and gives no indication that it was ever asked to consider any federal question, it will be assumed that the omission results from a failure to present the question properly in the state court, unless the Petitioner affirmatively shows that the question was presented. *Street* v. *State of New York,* 394 U.S. 576 (1969); *Fuller* v. *State of Oregon,* 417 U.S. 40 (1974).

In his Petition For Writ Of Certiorari, the Petitioner blithely asserts that the federal question was raised in the administrative hearing, in the Complaint For Administrative Review before the Cook County Circuit Court, in the Appellate Court of Illinois, and the Illinois Supreme Court. (Petition, p.5). This assertion fails to comply with the requirements of Supreme Court Rule 21.1(h), that Petitioner set forth "specific reference to the places in the record where the matter appears." In fact, "the matter" does not appear in the record. Respondents invite this Court's attention to the Order of the Board, to Petitioner's Complaint in the Circuit Court, and to the opinions of the three state courts which have considered this case. Nowhere in any of these documents is the issue raised or decided which is now stated by Petitioner as the Question Presented For Review. Only in the concurring opinion of the Illinois Appellate Court is passing, and hypothetical, reference made to "innocent people" in the context of an argument for a different standard of review than the one applied by the majority. Not even in the decision of the Circuit Court, in which Petitioner prevailed, was any mention made of "due process," "innocent motorists," or "probable cause," which Petitioner now presents as the federal question to be reviewed by this Court. In his pleadings in the state courts, Petitioner has always based his challenge to the regulation on "public policy" grounds. Now he seeks to reformulate that challenge, to base it on due process grounds. Clearly, while due process issues may enter into public policy considerations, the two doctrines are not synonymous, co-extensive, nor interchangeable.

The Petition For Writ Of Certiorari is insufficient because it contains no showing whatsoever that the question it seeks to have reviewed was in fact ever presented to or decided by the Illinois Supreme Court. Since the federal question presented to this Court has not been ruled upon by the highest state court which considered the case, this Court has no jurisdiction to review the question.

## II.

## THE DECISION OF THE ILLINOIS SUPREME COURT RESTS ON AN ADEQUATE STATE GROUND.

This Court will decline to review a state court decision on a Petition For Writ Of Certiorari where an adequate state ground exists for that decision. *Zacchini* v. *Scripps-Howard Broadcasting Company,* 433 U.S. 562 (1967); *Wilson* v. *Loew's, Inc.,* 355 U.S. 597 (1958). In this case, the only basis for the decision of the Illinois Supreme Court was a state ground. Specifically, the Illinois Supreme Court held that as a matter of Illinois law, Petitioner "had the burden of showing that the administrative regulation was arbitrary and unreasonable. He failed to meet that burden." 459 N.E. 2d 925, 929. The Supreme Court found that:

> Appellant did not present any evidence to demonstrate that the traffic index standard was unreasonable. Neither Appellant nor any other officer testified that he was forced to issue more tickets that were justified in order to meet the traffic index standard. None of them testified that the 0.8 standard was an unreasonable or arbitrary standard. . . . [T]here was no conclusive evidence presented to show that the traffic index standard had not reduced the number of accidents. . . . The Appellant failed to show that reliance upon these standards, in evaluating officers, was unreasonable or arbitrary. 459 N.E. 2d 925, 929.

Clearly, the decision of the Illinois Supreme Court was based on its review of the evidentiary record of this case and not on any question of federal law. The Court never had to reach any question of due process or public policy concerning the administrative regulation since it found that Petitioner had failed to allege or prove any facts which would raise those issues.

The Petition For Writ Of Certiorari seeks to introduce new evidence into these proceedings when it discusses at length what purports to be a statute of the State of Pennsylvania. (Petition, p. 10-11). This discussion is completely *dehors* the

record of this case and has no relevancy to the issues here presented.

The Petition For Writ Of Certiorari also asserts that:

> . . . not only are traffic quotas inherently wrong from the standpoint that innocent motorists are subjected to traffic citations without probable cause, but that a police officer [sic] is deprived of the discretion to issue a traffic citation, which discretion is recognized as being vital under Illinois law.) (Citations omitted). (Petition, p. 11).

The opinion of the Illinois Court of Appeals responds to this argument clearly and succinctly.

> Plaintiff's central challenge to the regulations at issue appears to be that they establish an absolute quota to be met by the police officers and that such quota systems are *per se* against public policy. For that proposition, plaintiff cites *People* v. *Patterson* (1980), 88 Ill. App. 3d 144, 410 N.E.2d 223, and *Bodenschatz* v. *State Personnel Board* (1971) 15 Cal. App. 3d 775, 93 Cal. Rptr. 471. But neither of those cases even involved quota systems. In *Patterson,* . . . [t]he court noted that an officer may always issue a warning or reprimand without citing a motorist. We find nothing in that statement of the discretion invested in a police officer to support the proposition that the regulation at issue here is against public policy. Nothing in the record indicates that plaintiff was not free to exercise his discretion in a similar matter in any individual case. In *Bodenschatz,* a police officer was dismissed because his enforcement activity was well below the average for his fellow officers. The officer challenged his dismissal in part because he contended that his level of activity was low only because the police department had a policy of requiring its officers to engage in more enforcement activity that circumstances warranted. The appellate court agreed that such a policy would be improper as contrary to the public interest but noted that the officer had failed to meet his burden of proving that such a policy was in existence. *In this cause there was no evidence to suggest that plaintiff was*

> *being asked to meet standards which were unreasonably high. Nor was there any testimony that other police officers or the plaintiff would have had to issue unjustified citations to meet the standards.* 443 N.E.2d 222, 224. (Emphasis added).

The decision of the state court is expressly based on its determination that Petitioner introduced no evidence to support his theory of the effect of the administrative regulation. Since Petitioner failed to prove that the regulation has the factual effect he claims, he cannot ask this Court to decide whether that effect violates due process considerations.

The question of the standard of review in determining the validity of administrative regulations being one of state law, there was in this case an adequate and independent state ground for the decision irrespective of the constitutional issue that this Court is now urged to review. When a state decision rests on adequate foundation of state substantive law, it is immune from review in the Federal courts. *Wainwright* v. *Sykes,* 433 U.S. 72 (1977); *Herb* v. *Pitcairn,* 324 U.S. 117 (1945); *Murdock* v. *City of Memphis,* 87 U.S. (20 Wall.) 590 (1874).

## III.

## THE PETITIONER HAS NO STANDING TO RAISE THE QUESTION PRESENTED FOR REVIEW.

The federal question raised in the Petition For Writ Of Certiorari asserts a violation of due process rights of "innocent motorists (subjected to) the issuance of traffic citations without probable cause." As shown above, Petitioner has failed to establish that any such motorists received any such citations. However, assuming *arguendo* that the administrative regulation did have the effect alleged, Petitioner has no standing to assert the constitutional rights of such motorists in challenging his three day suspension for *failing* to issue sufficient citations. The

motorists whose rights are alleged to be violated, if they exist at all, are not parties to this action.

This Court has repeatedly held that "constitutional rights are personal and may not be asserted vicariously." *McGowan* v. *Maryland*, 366 U.S. 420, 429-430 (1961). Constitutional judgments are justified only out of the necessity of adjudicating rights in the particular cases between litigants before the court. *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803).

> Embedded in the traditional rules governing constitutional adjudication is the principal that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in other situations not before the court. *Broadrick* v. *Oklahoma*, 413 U.S. 601 (1973); Cf. *Parker* v. *Levy*, 417 U.S. 733 (1974).

Only limited exceptions to these principals have been recognized by this Court, such as where individuals not party to a particular suit stand to lose by its outcome and yet have no effective avenue of preserving their rights themselves. *Broadrick* v. *Oklahoma*, 413 U.S. 601, 611 (1973); *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972). Clearly, this exception is not applicable to the present case, as an innocent motorist who is issued a traffic citation without probable cause could avail himself of the established judicial avenues of contesting that citation.

Since the question presented for review by Petitioner in this case assumes facts not in evidence and asserts constitutional rights of persons not party to this litigation, the petition should be denied.

## CONCLUSION

Petitioner has failed to carry his burden of showing that he has properly reserved for review the constitutional question he presents. The decision that he asks this Court to review is purely a ruling on the sufficiency of evidence produced at the administrative hearing, which rests entirely on state grounds. Moreover, the federal due process question raised by the Petition For Writ Of Certiorari asserts constitutional rights of third persons not party to this action and is grounded on hypothetical facts not supported by any evidence in the record of this case. Accordingly, Respondents respectfully pray that this Court deny the Petition For Writ Of Certiorari.

Respectfully submitted,

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# APPENDIX

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

BEFORE THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, ILLINOIS

IN THE MATTER OF THE APPEAL OF RICHARD R. BEGG, A POLICE OFFICER OF THE POLICE DEPARTMENT OF THE CITY OF PARK RIDGE, ILLINOIS.

## FINDINGS AND DECISION

This matter comes on to be heard by the undersigned Board of Fire and Police Commissioners of the City of Park Ridge, Illinois upon the appeal of Police Officer RICHARD R. BEGG (hereinafter referred to as "Appellant"), from a Suspension Order dated August 15, 1980 by Director of Public Safety, G. JOE MOFFITT (hereinafter referred to as Appellee), wherein said Appellant was suspended for three (3) days without pay for the alleged violation of certain performance standards applicable to patrol officers of the Park Ridge Police Department. A copy of said Suspension Order is incorporated herein by reference. This Board held a public hearing on said appeal on December 8, 1980 pursuant to notice as required by law, and, having heard and reviewed the testimony and other evidence presented at said hearing, and after due deliberation and being fully advised in the premises, FINDS:

1. Appellant was at all times mentioned herein and pertaining hereto a police officer of the Police Department of the City of Park Ridge, Illinois, assigned to duties as a patrol officer.

2. By Suspension Order dated August 15, 1980 Appellant was suspended by Appellee for a period of three (3) days without pay for the alleged violation of Part I of said performance standard relative to traffic arrests ("traffic index") and Part II relative to non-traffic arrests, for the period of April 1, 1980 through June 30, 1980.

3. Within the time permitted by law and in the manner required, Appellant filed an appeal of said suspension with this Board.

4. This Board has jurisdiction of the subject matter of said appeal and the persons of the parties hereto.

5. All notices and other things required to be done prior to delivery and after said hearing have been done.

6. Throughout the hearing, both Appellant and Appellee appeared in person and were represented by legal counsel of their own selection. All witnesses were sworn on, testified under oath, and were subject to cross examination.

7. The manifest weight of the evidence shows by a preponderance that:

A. Contrary to Part I of said Performance Standard, Appellant's "traffic index" for the period April 1, 1980 through June 30, 1980 was .59 traffic arrests per day, whereas Appellee had informed Appellant in writing by instrument dated April 24, 1980 that the minimum acceptable level for such traffic index was .80 traffic arrests per day.

B. Contrary to Part II of said Performance Standard, Appellant's non-traffic performance for the period April 1, 1980 through June 30, 1980 was .97 non-traffic arrests per day, whereas Appellee had informed Appellant in writing by instrument dated April 24, 1980 that the minimum acceptable level for such non-traffic performance was 1.50 non-traffic arrests per day.

C. There was no demonstration by Appellant of any mitigating circumstance sufficient to excuse his performance below said required standards.

8. The aforesaid conduct by Appellant was a violation sufficient to warrant the three (3) day suspension given.

NOW THEREFORE, IT IS HEREBY ORDERED AND DETERMINED that the aforesaid suspension of Police Officer RICHARD R. BEGG for three (3) days without pay for the violations set forth above be and the same is hereby affirmed.

December 29, 1980

/s/ EDWARD A. CRUSE

/s/ RICHARD P. HEFFERAN

/s/ ROBERT E. BERGMANN

being all of the member of the Fire & Police Commissioners of the City of Park Ridge, Ill.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—LAW DIVISION

RICHARD R. BEGG,
*Plaintiff*

*-vs-*

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, EDWARD A. CRUSE, RICHARD P. HEFFERAN, ROBERT E. BERGMANN, and G. JOE MOFFITT, DIRECTOR OF PUBLIC SAFETY FOR THE CITY OF PARK RIDGE, ILLINOIS,
*Defendants*

NO. 81 L 2184

**COMPLAINT FOR ADMINISTRATIVE REVIEW**

NOW COMES RICHARD R. BEGG, plaintiff, by STANLEY H. JAKALA, his attorney, complaining of the defendants, BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, EDWARD A. CRUSE, RICHARD P. HEFFERAN, ROBERT E. BERGMANN, and G. JOE MOFFITT, DIRECTOR OF PUBLIC SAFETY FOR THE CITY OF PARK RIDGE, ILLINOIS, and states as follows:

1. That on April 15, 1980, the plaintiff, RICHARD R. BEGG, had been suspended for a period of three days without pay by Director of Public Safety for the City of Park Ridge, Illinois, G. Joe Moffitt, in that he had violated a certain performance standard of the City of Park Ridge relative to

traffic arrests (traffic index) and non-traffic arrests covering a period from April 1, 1980, through June 30, 1980.

2. That the plaintiff had appealed the three day suspension order without pay as described in paragraph 1 of this complaint for administrative review to the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois.

3. That on December 29, 1980, an administrative decision was rendered by the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, Edward A. Cruse, Richard P. Hefferan, and Robert E. Bergmann, defendants, affecting the rights of the plaintiff, a copy of the said decision was served on the plaintiff personally on December 29, 1980.

4. That the plaintiff desires a judicial review of the final decision of the administrative agency which decision upheld the three-day suspension without pay of the plaintiff, said suspension order being issued by the Director of Public Safety of the City of Park Ridge, Illinois, G. Joe Moffitt, in connection with the plaintiff allegedly violating a certain performance standard of the City of Park Ridge, Illinois relative to traffic arrests (traffic index) covering the period from April 1, 1980, through June 30, 1980.

5. That judicial review is sought for the reason that the decision is both contrary to law and contrary to the actual facts of the case and specifically a traffic/ticket quota system is against public policy.

6. That the defendant, G. Joe Moffitt, Director of Public Safety of the City of Park Ridge, Illinois, is named as a defendant in that he is an interested party in these proceedings.

7. That the defendants, Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, Edward A. Cruse, Richard P. Hefferan, Robert E. Bergmann, are hereby requested to file the record of proceedings had before them

pertaining to the entry of the aforementioned decision together with whatever evidence, exhibits of other matters that were submitted to the hearing officers on December 8, 1980.

WHEREFORE, PLAINTIFF, RICHARD R. BEGG, RESPECTFULLY PRAYS:

A. That the record sustaining the three-day suspension without pay of the plaintiff by the Director of Public Safety of the City of Park Ridge, Illinois, G. Joe Moffitt, in connection with the plaintiff allegedly violating a certain standard of performance of the City of Park Ridge, Illinois, relative to traffic arrests (traffic index) and non-traffic arrests covering a period from April 1, 1980, through June 30, 1980, had, or considered, by the hearing officers of the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, be judicially reviewed.

B. That the decision of the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, be reversed.

C. That the plaintiff be granted such other and further relief as he would be entitled under the law.

_____

Richard R. Begg

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

RICHARD R. BEGG, after first being duly sworn upon oath, deposes and says he has read the foregoing complaint by him subscribed, knows the contents thereof and that the same is true.

_____

Subscribed and sworn to before me this ____day of _____, 1981.

_____

Notary Public

Stanley H. Jakala
Attorney for Plaintiff
3219 Maple Avenue
Berwyn, Illinois 60402
(312) 788-5733

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—LAW DIVISION

RICHARD R. BEGG,

*Plaintiff*

*-vs-*

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, EDWARD A. CRUSE, RICHARD P. HEFFERMAN, ROBERT E. BERGMANN, and G. JOE MOFFITT, DIRECTOR OF PUBLIC SAFETY FOR THE CITY OF PARK RIDGE, ILLINOIS,

*Defendants*

NO. 81 L 2184

**BRIEF IN SUPPORT OF PLAINTIFF'S COMPLAINT FOR ADMINISTRATIVE REVIEW**

STATEMENT OF FACTS

On August 15, 1981, G. Joe Moffitt, Director of Public Safety, City of Park Ridge, Illinois, issued a letter to the plaintiff wherein it was stated that from April 1, 1980 through June 30, 1980, the plaintiff did not write the required daily City of Park Ridge Police Department traffic citations and had not involved himself in the daily required non-traffic arrest situations as demanded by the City of Park Ridge Police Department thereby failing to meet the performance standards for both categories resulting in a three-day suspension, a copy of said dated correspondence of August 15, 1980 is marked as "Exhibit A" and attached to this Brief.

From the three-day suspension, the plaintiff appealed to the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois.

After the hearing before the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, the Board sustained the three-day suspension by ruling that the plaintiff had not met the performance standards of the City of Park Ridge, Illinois concerning the issuance of the required daily traffic ticket citations covering the period from April 1, 1980 through June 30, 1980, that the plaintiff had not met the non-traffic performance standard covering the same period, and that the plaintiff had not demonstrated any mitigating circumstances sufficient to excuse his performance in conforming with the standards.

## ISSUE PRESENTED

The issue is whether a traffic quota system violates public policy.

## ARGUMENT

In analyzing the Transcript of Proceedings, the City of Park Ridge contended that its demand of its police officers to issue a certain amount of traffic ticket citations per day related to a traffic index score. (Tr. p. 32).

That the purpose of the traffic index score was to reduce injuries and deaths caused by automobile accidents. (Tr. p. 39, 40).

Nevertheless, in the presentation of its evidence, the City of Park Ridge admitted that its traffic index score did not minimize or decrease injuries, deaths or automobile accidents in Park Ridge, Illinois. (Tr. p. 41-44).

At the same time, the City of Park Ridge, in its testimony, admitted that the traffic index score is not the best way to measure the qualifications of a police officer. (Tr. p. 45).

In questioning Police Lieutenant George Tuene of the City of Park Ridge, Illinois Police Department, one of the two witnesses testifying for the City of Park Ridge, the Lieutenant admitted that the traffic index score of the City of Park Ridge is a traffic quota system which requires the issuance of a certain amount of traffic citation tickets per day. (Tr. p. 76-77).

In the presentation of the plaintiff's evidence, the plaintiff's evidence abundantly established that the traffic index score of the City of Park Ridge was indeed a traffic quota system. (Tr. p. 79, 84, 89, 98, 112, 113).

It is the contention of the plaintiff that the quota system is contrary to the public policy of the State of Illinois as reflected by the following quotation from *People* v. *Patterson,* 88 Ill. App. 3d 144, Page 146:

> "... an officer may also warn of a traffic violation or reprimand the driver without citing him ..."

In this instance, the traffic quota system of the City of Park Ridge neither reduced injuries, deaths or automobile accidents.

Likewise, the traffic quota system was not utilized in a minimal evaluation of the plaintiff as was suggested by Park Ridge Police Captain John Boudek, Commander of Field Operations Bureau of the City of Park Ridge Police Department. (Tr. p. 45).

On the contrary, the traffic quota system evaluation constitutes at least 40% to 90% of a City of Park Ridge evaluation of a police officer's ability. (Tr. p. 73, 81, 82, 92, 117).

Therefore, the decision of the Board of Fire and Police Commissioners of the City of Park Ridge is against the manifest weight of the evidence in that plaintiff did demonstrate mitigating circumstances to excuse his performance from observing traffic ticket quota system in that the traffic quota system is against public policy by requiring a police officer to issue daily a specific number of traffic citations without affording him the discretion to either write or not write those citations.

Furthermore, the decision of the Board of Fire and Police Commissioners of the City of Park Ridge is against the manifest weight of the evidence in that it does not promote the public welfare or safety, since injuries, deaths and automobile accidents have not been decreased by the establishment of the quota traffic system of the Park Ridge Police Department.

In addition, the public welfare or safety of Park Ridge is not being promoted by the traffic quota system in that questionable traffic violations result in the issuance of traffic tickets for the purpose of meeting a traffic quota system thereby depriving the Park Ridge police officer of his discretion to determine whether or not a violation in question justifiably deserves the issuance of a traffic ticket.

For reasons enumerated herein, the decision of the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois is against the manifest weight of the evidence and is subject to reversal. *Sudduth* v. *Board of Fire and Police Commissioners of the City of Rockford,* 1964, 48 Ill App 2d 194; *Fantozzi* v. *Board of Fire and Police Commissioners of the Village of Villa Park,* 35 Ill App 2d 248 (1963); *Davern* v. *Civil Service Commission* (1970) 47 Ill 2d 469; *Oliver B. Christensen* v. *Board of Fire and Police Commissioners of the Village of Oak Forest,* 11 Ill App 3d 487 (1973); *Basketfield* v. *Police Board of the City of Chicago,* 56 Ill 2d 351 (1974); *Stanton* v. *Board of Fire and Police Commissioners of the Village of Bridgeview,* 37 Ill App 3d 108 (1976); *Brawka* v. *Board of Fire and Police*

*Commissioners*, 9 Ill App 3d 879 (1973); and *Chigaros* v. *Murphy*, 27 Ill App 3d 545 (1975).

/s/ STANLEY H. JAKALA
Stanley H. Jakala

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No. 83-1675

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

RICHARD BEGG,

*Petitioner,*

vs.

BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, ILLINOIS, and the CITY OF PARK RIDGE, ILLINOIS,

*Respondents.*

On Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

## REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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In The

# Supreme Court of the United States

October Term, 1983

---

**RICHARD BEGG,**

*Petitioner,*

vs.

**BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF PARK RIDGE, ILLINOIS, and the CITY OF PARK RIDGE, ILLINOIS,**

*Respondents.*

---

**On Petition For Writ Of Certiorari To The Supreme Court Of Illinois**

## REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

### I.

### A FEDERAL QUESTION HAS BEEN ADEQUATELY PRESENTED TO THE STATE COURT.

Respondents suggest that this Court lacks jurisdiction to review this matter because Petitioner has never raised a federal question in the state court. This contention borders on the ridiculous. Any review of the record in this case will clearly demonstrate that it has always been the Petitioner's position that he could not be disciplined for failure

to meet a traffic ticket quota because such a quota is against public policy. A quota system logically mandates that police officers charge members of the public with a certain number of criminal infractions over a designated time period whether or not such charges are warranted, or risk disciplinary measures if they fail to do so. By any reasonable interpretation, the threat of groundless arrests has constitutional implications. These implications form the basis for Petitioner's argument that the quota system is against public policy.

Petitioner raised the issue at the administrative hearing when he argued in favor of his motion to dismiss the disciplinary charges, since they violated public policy. (Transcript of pages 12 and 13 of said proceedings is reprinted herein as Appendix A.)

With reference to that motion to dismiss, the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, considered that issue and denied the motion of the plaintiff for dismissal relative to his legal position that the traffic quota system violated public policy as is reflected by the proceedings before it. (Transcript of proceedings, pages 18 and 19, are reprinted herein as Appendix B.)

Subsequently, Petitioner raised the issue in his complaint for administrative review in the Circuit Court of Cook County, Illinois, specifically paragraph 5, wherein he states that a traffic/ticket quota system is against public policy (Respondents' Appendix page 5A).

Furthermore, in the aforesaid complaint, in his prayer, paragraph A, he requests that the record before the Board of Fire and Police Commissioners of the City of Park Ridge, Illinois, be judicially reviewed, which, in effect, includes the motion to dismiss before the adminis-

trative hearing pertaining to the issue of the traffic quota being against public policy (Respondents' Appendix page 6A).

Likewise, in his brief, Petitioner states that the traffic quota system is against public policy in that it deprives the Park Ridge, Illinois, police officer of his discretion to determine whether or not a violation in question justifiably deserves the issuance of a traffic ticket (Respondents' Appendix page 11A).

The issue was again faced by the Illinois Appellate Court. In fact, the opinion of that court states:

> Plaintiff's central challenge to the regulation at issue appears to be that they establish an absolute quota to be met by the police officers and that such quota systems are per se against public policy. 110 Ill. App. 3d 141, 145.

Considering the appellate court's language, Respondents' claim that the issue was not raised either administratively or in the state courts and is being presented here for the first time is incredible.

Furthermore, based on the record, the Illinois Supreme Court clearly had the issue placed before it. The circuit court based its decision to reverse the suspension on Petitioner's argument that a traffic ticket quota system is inherently against public policy. This contention was acknowledged by the Illinois Appellate Court, but only found persuasive by one justice who in turn wrote a specially concurring opinion to that effect.

The failure of the Illinois Supreme Court to deal effectively with the issue presented to it is not a bar to the jurisdiction of this Court. The issue of whether a federal question was raised sufficiently in the state courts is itself a federal question which may properly be decided by this Court. *Street v. New York*, 394 U.S. 576 (1969).

The standards governing the adequacy of the presentation of constitutional issues in the state courts were discussed by this Court in *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928). The Court said:

> No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefore be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented. Of course the decision must have been against the claim of invalidity, but it is not necessary that the ruling should have been put in direct terms. If the necessary effect of the judgment has been to deny the claim, that is enough. 278 U.S. at 67.

The record in this case clearly shows that the question of the constitutional validity of a traffic ticket quota system has been placed before all the courts at the state level, and that the issue has been resolved against the Petitioner by the Illinois Supreme Court. Therefore, the jurisdictional threshold has been met; and this Court is free to consider the merits of Petitioner's claim.

## II.

## THE DECISION OF THE ILLINOIS SUPREME COURT DOES NOT REST ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

Respondents further suggest that this Court cannot review the decision of the Illinois Supreme Court because an adequate state ground exists for that decision. The asserted adequate state ground is the general principle of Illinois law that administrative regulations are presumptively valid and that they will only be set aside if arbitrary or capricious. *See, Midwest Petroleum Marketers*

*Association v. City of Chicago*, 82 Ill. App. 3d 494 (1980), *Illinois Coal Operators Association v. Pollution Control Board*, 37 Ill. App. 3d 264 (1976).

Petitioner maintains the view articulated by Justice Johnson of the Illinois Appellate Court in his specially concurring opinion that special considerations are present when the regulation at issue requires a police officer to charge members of the public with a certain amount of criminal activity regardless of whether the charges are warranted. The due process considerations necessarily implicated in such a situation counsel against merely applying the usual test for validity of an administrative regulation.

This Court will only decline to review a state court decision when a sufficient non-federal ground is both independent of the federal ground and adequate to support the judgment. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935). Petitioner submits that, due to the nature of the regulation, the state court's decision was necessarily interwoven with the federal law. For that reason, this Court is free to ascertain for itself, in order that constitutional guarantees be enforced, whether the asserted non-federal ground adequately supports the judgment. *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931).

In this case, the Court is being asked to protect the integrity of a part of the United States Constitution, not to decide an issue of state law. Because the constitutional question is unavoidably involved in any ruling on the validity of a traffic ticket quota system, the decision of the Illinois Supreme Court is subject to review by this Court. *Michigan v. Long*, ..... U.S. ....., 103 S.Ct. 3469 (1983), *Enterprise Irrigation District v. Farmer's Mutual Canal Company*, 243 U.S. 157 (1917).

## III.

## THE PETITIONER HAS STANDING TO CONTEST THE VALIDITY OF THE TRAFFIC TICKET QUOTA REGULATION.

Finally, Respondents urge the petition be denied because the Petitioner lacks standing to contest the traffic ticket quota regulation. However, to assert that the Petitioner is merely vicariously asserting the rights of innocent motorists misapprehends the nature of Petitioner's claim.

The Petitioner entered the court system to contest the suspension he received for not writing enough citations. He was disciplined on the basis of what he contends is an unconstitutional regulation. Petitioner is attacking the traffic ticket quota because it has injured him personally. The constitutional element of standing is the plaintiff's demonstration of any injury to himself that is likely to be redressed by a favorable decision on his claim. *Board of Regents of University of California v. Bakke*, 438 U.S. 265 (1978), *Warth v. Seldin*, 422 U.S. 490 (1975). The Petitioner meets this requirement as he was injured by operation of the traffic ticket quota.

Moreover, the fact that innocent motorists may also benefit from a favorable decision on the Petitioner's claim does not operate to deny him standing to contest the regulation. This Court has the power to redress the complaining party's injury whether or not the judgment may benefit others collaterally. *Warth* at 499.

## CONCLUSION

For the reasons enumerated herein, the writ should be granted.

Respectfully submitted,

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Berwyn, Illinois 60402
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*Attorney for Petitioner*

## APPENDIX A

12* Mr. Jakala: * * * The third consideration is that in studying the Park Ridge suggested issuance of traffic citations and other related-type activity and by setting up a specific amount of tickets that must be issued per day, I cannot see how one can logically state that it is not a quota system. Anybody in sales knows that if a salesman is told you must sell $100
13 worth of items, that's your quota or else it's your job. Is that any different than what is being asked of the police officers of this particular police department?

It is my contention that it is a quota system, and we know that quota systems in police departments are against public policy.

Name me a police department that will say a quota system is an applicable way of doing business, and there isn't one police department that will say, "Yes, we have a quota system and we enforce it because it really means bringing in revenue more than perhaps enforcing the law in a proper sense."

And I say for that reason, my motion to dismiss has been filed; and I ask very humbly and respectfully of this Board to consider the merits of it. Thank you.

* * *

* Numbers in margin refer to the page numbers of the Transcript of Proceedings.

## APPENDIX B

18* Mr. Cruse: * * * As to the question of whether requiring officers to make certain amount of arrests per day is contrary to public policy, that is a matter which this Board is hardly qualified to rule on, and
19 there is some question as to whether arrests per day is in fact the basis of these numbers.

The Board therefore must deny the motion to dismiss, but without any prejudice to some of the argument which have already been opened on here.

* * *

* Numbers in margin refer to the page numbers of the Transcript of Proceedings.